THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.1253 OF 2000

Date: 14.09.2005

Between:

The Executive Enginer, Gates Errection Division, P.J.P.Camp, Gadwal. And another.

… Petitioners.

And

Sri Mallikarjuna Goud, S/o Sunkanna Goud, R/o PJP/B-13, Revulapalli Camp, Jurala Project, Gadwal and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOS: 1253 OF 2000 AND 5869 OF 2000

COMMON ORDER:

W.P.No.1253 of 2000 is filed by the Executive Engineer, Gates Errection Division, P.J.P. Camp, Gadwal, against the award of the Industrial Tribunal-cum-Labour Court, Hyderabd in I.D.No.176 of 1998 and W.P.No.5869 of 2000 is filed by the

Workman against the very same award. Since both the writ petitions arise against the award in I.D.No.176 of 1988, dated 24.09.1999, they are heard together and disposed of by this common order.

Facts, to the extent necessary for this writ petition, are that the petitioner in W.P.No.5869 of 2000, (here-in-after called as the workman), was initially appointed as helper Grade-I in the A.P. Construction Corporation Limited at Srisailam, in the early 1970s. On his termination from service, by the A.P. Construction Corporation, disputes were raised before the Industrial Tribunal. Pursuant to the award passed and the writ petitions filed, questioning the said award, having been dismissed, the workman was appointed as an NMR workman in the irrigation department on 05.06.1991. On 11.08.1993 the petitioner abstained from duty without intimating the authorities concerned. While the workman contends that he had submitted a representation to the 2nd respondent on 11.10.1993 requesting that he be taken back into service, this fact is disputed by the Executive Engineer and it is contended that the workman had sought permission to be taken back on duty only on 26.10.1994. Pursuant to the memo issued by the Government, on 09.12.1993, whereby officials were directed to strike the name of NMR's from the rolls, in case they did not attend work for two weeks, the petitioner was informed vide proceedings dated 23.02.1995 that as per the instructions of the Government, vide memo dated 09.12.1993, his name was removed from the list of daily rated workers with effect from 11.08.1993.

The workman approached the Industrial Tribunal-cum-Labour Court, under Section 2A(2) of the Industrial Disputes Act, contending that striking off his name from the rolls amounted to retrenchment and since the requirements under Section 25-F of the Industrial Disputes Act had not been complied with, his termination was illegal. On behalf of the employer, it is contended that the workman had voluntarily abandoned service and had, without leave having been sanctioned and without prior permission from the authorities, abstained from duty ever since 11.08.1993 and it was only on 26.10.1994 that he had reported for duty and in view of the Government memo dated 09.12.1993, necessary clarifications were sought from the Superintending Engineer and on receipt of intimation from the Superintending Engineer, vide letter dated 24.11.1994 (Ex.M3), Proceedings (Ex.M4) dated 23.02.1995 were issued removing the name of the petitioner from the list of daily rated workers.

The Tribunal, while holding that the procedure prescribed under Section 25-F of the Industrial Disputes Act had not been followed and that proceedings dated 23.02.1995 had been issued without putting the workman on notice and without holding any enquiry, however held that the workman had not produced any evidence to establish that he had informed the authorities that he had fallen sick or that he was going on leave. The Tribunal however held that since Ex.W2 revealed that the workman had been operated upon during the period from 11.08.1993 to 12.09.1993, his absence was not willful and wanton and that the workman was entitled for reinstatement. The Order dated 23.02.1995 was set aside and the work man was directed to be reinstated as Helper Grade Iwith continuity of service but without back wages.

Learned Government Pleader for Irrigation vehemently contends that since the workman had voluntarily abandoned service and had admittedly failed to obtain permission or sanction for leave, and his period of absence was in excess of one year two months, the labour Court had showed misplaced sympathy in directing his reinstatement with continuity of service. Learned Government Pleader would submit that provisions of Section 25-F of the Industrial Disputes Act would not apply in cases of voluntary abandonment from service and having abstained from duty for a period of more than one year, the employer was not obliged to take back the workman into service whenever he chose to join duty. Learned Counsel would submit that since Section 25-F of the Industrial Disputes Act has no application and inasmuch as voluntary abandonment from service would not amount to retrenchment, the award of the labour Court in directing reinstatement of the workman was liable to be set aside.

Sri B.G. Ravinder Reddy, learned Counsel for the workman, on the other hand would submit that the petitioner had submitted a representation on 12.09.1993 and as such the period of absence was only one month from 11.08.1993 to 12.09.1993. Learned Counsel would contend that the Tribunal had erred in disbelieving this evidence of the workman and in placing reliance on the testimony of M.W-1 to the effect that the workman had reported for duty only on 26.10.1994.

It is well settled that the Tribunal is the final Court of fact and this Court, in certiorari proceedings, would not sit in appeal over findings of fact arrived at by the Industrial Tribnunal. The Tribunal, on a consideration of the evidence on record,

disbelieved the contention of the workman that he had submitted a representation on 12.09.1993. It is therefore required to be accepted that the workman was unauthorisedly absent from duty from 11.08.1993 till 26.10.1994 for a period of one year two months.

Sri.B.G. Ravinder Reddy, learned Counsel for the petitioner, would submit that the action of the respondents in issuing proceedings dated 23.02.1995, striking of the name of the workman from the rolls, relying on an earlier memo dated 09.12.1993, would amount to a case of illegal termination in violation of Section 25-F of the I.D.Act. Learned Counsel would submit that even if it were to be held that the workman was unauthorisedly absent for a period of one year two months, it would, at best amount to misconduct, for which disciplinary action ought to have been taken by the employer after putting the workman on notice and conducting an enquiry, wherein a reasonable opportunity of defending himself ought to have been given to the workman. Learned Counsel would submit that, without putting the workman on notice and without complying with the mandatory requirement of Section 25-F of the Industrial Disputes Act, even in case of unauthorized absence of one year two months, the employer was not justified in striking off the name of the worker from the rolls. Learned Counsel would submit that since termination of services of the workman without following the mandatory requirements of Section 25-F of the Industrial Disputes Act would render the termination proceedings void, the Tribunal grossly erred in denying back wages to the workman and in addition to his being granted reinstatement with continuity of service, the workman ought to have also been given the benefit of back wages. Learned Counsel would submit that the labour Court has not chosen to assign any reasons for denying back wages to the work man.

Learned Counsel would refer to a Division Bench judgment of this Court in **The Chief Engineer, Central Zone APSEB, Vijayawada**, Wherein this Court held that even cases of long unauthorized absence would not result in automatic termination and since such unauthorized long absence amounts to misconduct, the employer is bound to hold an enquiry into alleged misconduct before terminating the services of an employee. The Division Bench of this Court relied on an earlier judgment of the Supreme Court in **D.K.Yadav Vs. J.M.A.Industries Ltd.**

It is no doubt true that even cases of long unauthorized absence, would also not result in automatic termination, without compliance of Section 25-F of the

Industrial Disputes Act or without conducting an enquiry into the said allegations of misconduct of unauthorized absence. However in the case on hand, we are concerned with the award of the Tribunal, passed on an application filed by the workman, under Section 2-A(2) of the Industrial Disputes Act. The Tribunal, on disbelieving the evidence of the workman, had come to the conclusion that the workman was unauthorisedly absent for a period of one year two months from 11.08.1993 to 26.10.1994 and in such circumstances considered it appropriate to deny back wages to the workman. Exercise of discretion by the Tribunal, under the provisions of the Industrial Disputes Act would, normally, not be interfered with by this Court under Article 226 of the Constitution of India unless exercise of such discretion is palpably, arbitrary or is a case wherein such discretion ought not have been exercised at all. In the facts and circumstances of the present case, it cannot be said that exercise of discretion by the Tribunal, in denying back wages, on coming to the conclusion that the workman had been unauthorisedly absent for one year two months, is a discretion which ought not to have been exercised at all.

It is no doubt true that termination of services of a workman, without complying with the mandatory requirements of Section 25-F would render the termination illegal entitling the workman be reinstated into service. The fact however remains that the workman was, unauthorisedly absent without obtaining prior sanction of leave and without intimating the officers concerned, for a period in excess of one year two months from 11.08.1993 to 26.10.1994 and as such the labour Court considered it proper to deny back wages to the workman concerned. Exercise of discretion by the labour Court in directing reinstatement with continuity of service while denying back wages to the workman concerned does not call for interference by this Court in certiorari proceedings under Article 226 of the Constitution of India. The award passed in I.D.No.176 of 1998, dated 24.09.1999 is upheld.

Accordingly, both the writ petitions i.e., W.P.No.1253 of 2000 and

W.P.No.5869 of 2000 are dismissed. There shall however be no order as to costs.

Date: 14.09.2005

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RAMESH RANGANATHAN, J

MRKR